

Remarks/Arguments

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed August 7, 2007. Currently, claims 1-47 remain pending. Claims 1-13, 20-23, and 30-47 have been rejected. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 102

In paragraph 1 of the Final Office Action, claims 1-13, 20-23, and 30-47 were rejected under 35 U.S.C. 102(b) as being anticipated by Huter et al. (U.S. Patent No. 6,511,496). After careful review, Applicant must respectfully traverse the rejection.

Turning to claim 1, which recites:

1. (Previously Presented) A filter configured to be used in connection with an intravascular device, the filter comprising a polyurethane film having a thickness of less than 25µm, the polyurethane film being formed to have an enclosed distal end and an open proximal end.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (See MPEP § 2131). Therefore, in order for Huter et al. to anticipate claim 1, Huter et al. must teach each and every element in as complete of detail as is contained in claim 1.

Nowhere does Huter et al. appear to disclose “a polyurethane film having a thickness of less than 25µm”, as recited in claim 1. On page 3 of the Final Office Action, the Examiner asserts that “the polyurethane film filtering element (22) of Huter et al does disclose having a thickness of about 0.001 to about 0.005 inch (col. 7, lines 45-59) which is less than 25 µm”. However, Applicant must respectfully disagree. About 0.001 to about 0.005 is clearly not less than 25 µm. The conversion units for converting inches to micrometers is 1 inch equals 25400 micrometers. As such, 0.001 inches is 25.4 micrometers and 0.005 inches is 127 micrometers. Accordingly, Huter et al. teaches a range from about 25.4 µm to about 127 µm, which is clearly greater than 25 µm.

Therefore, Huter et al. does not appear to disclose each and every element of claim 1, as is required for anticipation.

Furthermore, MPEP § 2131.03 Section III states:

**III. PRIOR ART WHICH TEACHES A VALUE OR RANGE
THAT IS VERY CLOSE TO, BUT DOES NOT
OVERLAP OR TOUCH, THE CLAIMED RANGE DOES
NOT ANTICIPATE THE CLAIMED RANGE**

“[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which takes differences into account.” *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985)

As clearly discussed above, Huter et al. teach a range of 25.4 um to 127 um, which does not overlap or touch less than 25 um. Therefore, for at least this reason, claim 1 is believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons discussed above, as well as others, claims 2-11, which depend from claim 1 and include significant additional limitations, are believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 12, which recites:

12. (Previously Presented) A method of constructing a filter for use in connection with an embolic protection device, the method comprising:

forming a first section of a filter material having a thickness of less than 25µm, the first section having a first edge and a second edge;

contacting at least a portion of the first edge with at least a portion of the second edge;

bonding together the at least a portion of the first edge with at least a portion of the second edge, such that the first section is formed into a sack-like shape.

As discussed above, nowhere does Huter et al. appear to disclose, “forming a first section of a filter material having a thickness of less than 25µm”, as recited in claim 12. Furthermore, nowhere does Huter et al. appear to disclose a method of forming a first section of filter material having a first edge and a second edge, contacting at least a

portion of the first edge with at least a portion of the second edge, and bonding together the at least a portion of the first edge with at least a portion of the second edge.

Instead, Huter et al. discloses, “[t]he filtering element 22 may be formed as an integral unit by molding processes known to those skilled in the art or the membrane may be composed of several cut sheets each of which is individually attached between adjacent struts 44 of the strut assembly 24.” (Column 7, lines 33-37). This appears to show that the filter is made with a molding process or by individual sheets attached to the struts, neither of which teach bonding together a first edge with a second edge of a first section of filter material. Additionally, for anticipation, Huter et al. must teach each and every element in as complete of detail as is contained in the claim. Thus, Huter et al. does not appear to teach each and every element in as complete of detail.

The Office Action cites element 48 of Huter et al. as being a first section and a second section that are bonded together. However, element 48 is a layer of polymeric material that is disposed on the struts. (See column 7, lines 3-7 and 15-18). As such, it is not part of the filter material or filter element (22). Therefore, for at least these reasons, claim 12 is believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons discussed above, as well as others, claims 13 and 20-21, which depend from claim 12 and include significant additional limitations, are believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 22, which recites:

22. (Previously Presented) A method of constructing a filter for use in connection with an embolic protection device, the method comprising:

forming a first section and a second section of a filter material, each section having a thickness of less than 25 μ m, the first section and the second section each having a first edge and a second edge;

contacting at least a portion of the first edge of the first section and the first edge of the second section;

contacting at least a portion of the second edge of the first section and the second edge of the second section;

bonding together at least a portion of the first edges and the second edges, such that the first section and second section are formed into a sack-like shape.

As discussed previously, nowhere does Huter et al. appear to disclose “forming a first section and a second section of a filter material, each section having a thickness of less than 25µm”, as recited in claim 22. Additionally, nowhere does Huter et al. appear to disclose “contacting at least a portion of the first edge of the first section and the first edge of the second section, contacting at least a portion of the second edge of the first section and the second edge of the second section, or bonding together at least a portion of the first edges and the second edges, such that the first section and second section are formed into a sack-like shape”, as recited in claim 22. Therefore, for at least these reasons, claim 22 is believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons discussed above, as well as others, claims 23 and 30-31, which depend from claim 22 and include significant additional limitations, are believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 32, which recites:

32. (Original) A filter configured to be used in connection with an embolic protection device, the filter comprising a filter material formed into a sack-like shape being enclosed at a distal end and having an opening at the proximal end thereof, the sack-like shape having at least one seam formed from the proximal end to the distal end.

As discussed previously, nowhere does Huter et al. appear to disclose, “a filter material formed into a sack-like shape being enclosed at a distal end and having an opening at the proximal end thereof”, as recited in claim 32. Additionally, nowhere does Huter et al. disclose, “the sack-like shape having at least one seam formed from the proximal end to the distal end”, as recited in claim 32.

Additionally, for similar reasons discussed above, as well as others, claims 33-42, which depend from claim 32 and include significant additional limitations, are believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 43, which recites:

43. (Original) A filter configured to be used in connection with an embolic protection device, the filter comprising:

a first section having a generally flat configuration and having a peripheral edge;

a second section, having a substantially similar configuration to the first section, bonded to the first section in close proximity to a peripheral edge of the first section, the combination of the first section and the second section forming a generally conical-shape being enclosed at a distal end and having an opening at the proximal end thereof, the conical-shape having at least one seam formed from the proximal end to the distal end.

As discussed previously, nowhere does Huter et al. appear to disclose “the combination of the first section and the second section forming a generally conical-shape being enclosed at a distal end and having an opening at the proximal end thereof”, as recited in claim 43. Therefore, for at least this reason, claim 43 is believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons discussed above, as well as others, claims 44-47, which depend from claim 43 and include significant additional limitations, are believed to be not anticipated by Huter et al. and Applicant respectfully requests withdrawal of the rejection.

Allowable Subject Matter

In paragraph 2 of the Office Action, claims 14-19 and 24-29 were objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claim. Applicant thanks the Examiner for considering claims 14-19 and 24-29 allowable subject matter.

In view of the foregoing, all pending claims, namely claims 1-47, are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

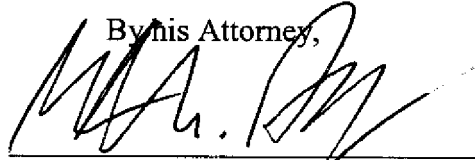
Respectfully submitted,

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By his Attorney,

Date:

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